

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010120293

ORDER GRANTING MOTION FOR  
STAY PUT (TEMPORARY  
PLACEMENT)

On December 9, 2010, Student filed a motion for stay put. On December 14, 2010, the District filed an opposition to Student's motion on the ground that (1) home/hospital instruction is not Student's last agreed upon IEP placement; and (2) Student's medical doctor has not recommended continuing Student's home/hospital instruction. On December 15, 2010, Student filed a reply to the District's opposition.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); 56505, subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

## DISCUSSION

The parties acknowledge that Student's last agreed upon placement pursuant to an IEP consisted of a district special day class (SDC). In June 2010, however, the District temporarily placed Student on home/hospital instruction in compliance with a request from Student's medical doctor (doctor). On May 11, 2010, Student's doctor provided the District with a Medical Status Report which indicated that Student was temporarily disabled due to behavioral outbursts secondary to autism. Additionally, Student had restrictions regarding contact with other individuals due to an immune deficiency. As a result, the doctor was uncomfortable about Student's safety, and requested that Student receive home instruction. The doctor further noted that Student would be reevaluated in September 2010, to determine if Student was ready to return to school. It is clear from both the Student's and the District's pleadings and exhibits submitted in connection with this motion, that the home instruction was intended to be temporary, and was never incorporated into Student's IEP.

In August 2010, the District informed Student's attorney that Student's placement for the 2010-2011 school year would return to the SDC placement. Student disagreed with the return to the SDC. Student correctly argues that the September 2010 date provided by the doctor represented an approximate date for Student's return to school. It is noted that Student had not yet been reevaluated, nor does it appear that the doctor provided a medical release for Student to return to school at that time. Without medical clearance from the doctor, Student's home/hospital instruction did not automatically terminate, nor could the District unilaterally end it.

On November 29, 2010, the doctor prepared a second Medical Status Report which was submitted to the District. The doctor indicated that Student continues to exhibit the same disabilities as described in May 2010. The report, however, does not require home/hospital instruction **if** Student can access a school campus of under 50 pupils, with no more than 10 students in his class. Again, the doctor indicated that the restrictions limiting Student's contact with others is related to his immune deficiency. The District has presented no information to indicate that it can provide Student with the small campus and limited contact with others as requested by the doctor. Therefore, Student's home/hospital instruction remains Student's temporary placement.

## ORDER

Student's home/hospital instruction remains his temporary placement.

Dated: December 21, 2010

/s/

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JUDITH PASEWARK

Administrative Law Judge

Office of Administrative Hearings

